

PATENT APPLICATION NO. 09/970,673  
ATTORNEY DOCKET NO. 53394.000525

### **REMARKS**

Claims 1-26 are currently pending in the application. Claims 1-26 have been rejected under 35 U.S.C. § 103(a). Applicant requests reconsideration and allowance of pending claims 1-26 in view of the following remarks.

Applicant respectfully requests entry of the Declaration of Prelo Hood (the "Hood Declaration"), attached hereto as Appendix I. Applicant submits that the Hood Declaration and associated test data is necessary to fully respond to Examiner's arguments. As discussed in more detail below, the test data in the Hood Declaration conclusively demonstrates that the prior art references do not disclose or render obvious each and every element of the Applicant's claimed invention. Applicant was unable to provide the Hood Declaration earlier because Applicant was unable to procure the test apparatus and material samples to conduct appropriate until now. Thus, pursuant to 37 C.F.R. § 1.116(e), Applicant respectfully requests entry of the Hood Declaration, and favorable consideration of the comments that follow.

### **Response to the 35 U.S.C. § 103 rejections**

The Examiner rejected claims 1-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,968,855 to Perdelwitz, Jr. *et al.* ("Perdelwitz") in view of U.S. Patent No. 4,323,069 to Ahr *et al.* ("Ahr"). The Applicant respectfully traverses and requests reconsideration of these rejections for at least the following reasons.

Three criteria must be met to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. See MPEP § 2142 *et seq.* Applicant respectfully submits that the prior art of record fails to teach or suggest all of the features of the pending claims.

In the rejection, the Examiner first alleges that Perdelwitz discloses an "absorbent article [that] has a 300 mL rewet under load of less than 1.25 g, as disclosed in column 9, lines 23-45 and table 2. It therefore follows that the rewet under load for only 200 mL

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would inherently be less than 1.25g as well." Office Action at page 2. The Examiner further alleges that Ahr teaches an absorbent article having an apertured film disposed between the inner layer and the absorbent core, where "[t]he addition of the apertured film 40 improves the rewet value." Office Action at page 3. Therefore, the Examiner contends, it would be obvious to one of ordinary skill in the art to construct the absorbent article of Perdelwitz with the apertured film of Ahr in order to further reduce the rewet of the absorbent article.

In the previous responses, the Applicant contended that the major premise for the Examiner's argument — that Perdelwitz inherently discloses an absorbent article having rewet values within the claimed range — is not supported by Perdelwitz. Until recently, the Applicant has not been able to provide data to support its contention, because the test apparatus and material samples were not readily available to perform the Perdelwitz rewet test method. However, Applicant has recently procured the required test apparatus and material samples, and compared the Perdelwitz test method to the test method of the present invention using both a nonwoven transfer layer and an apertured film transfer layer. Attached hereto as Appendix I is the Declaration of Prelo Hood. Mr. Hood is a Legal Liaison employed by Tyco Healthcare Retail Group, Inc., of King of Prussia, PA, the parent corporation of the assignee of this application (Paragon Trade Brands, Inc.). Mr. Hood supervised the laboratory tests that were conducted for the purpose of this comparison. Applicant respectfully requests entry of the Hood Declaration and the associated test data, and consideration of the facts presented therein.

As discussed below, at least three dispositive and material conclusions are drawn in the Hood Declaration: (1) the Perdelwitz rewet test method produces lower rewet results than the test method of the present invention; (2) an absorbent article having the Perdelwitz nonwoven transfer layer does not inherently have rewet properties within the claimed range; and (3) the apertured film transfer layer of the claimed invention produces lower rewet test results than a nonwoven transfer layer

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such as disclosed in the Perdelwitz. Hood Decl. ¶¶ 10 - 12. Applicant respectfully submits that the present invention is not obvious in view of Perdelwitz and Ahr.

(1) *The Perdelwitz rewet test method does not inherently produce higher rewet test results than the test method of the present invention*

The Examiner alleges that Perdelwitz discloses absorbent articles that have rewets within the claimed range, although tested by a different method. The Examiner further alleges that the differences between the Perdelwitz method and the claimed method are such that Perdelwitz's method inherently produces higher rewets. Therefore, the Examiner contends that the Perdelwitz absorbent articles, when tested according to the claimed test method, would inherently have rewets lower than those explicitly disclosed, and within the claimed range. Applicant respectfully submits that the Perdelwitz rewet test method does not inherently produce higher rewet results, and therefore the Examiner's conclusion is respectfully traversed.

In previous responses, Applicant pointed to the differences between the rewet test method of Perdelwitz and the rewet test method in the present application, and submitted that because of the differences in the test methods it is inappropriate to compare Perdelwitz's test results to the properties claimed by the present invention. (The comparison table discussed in previous responses is attached hereto as Appendix II, for the Examiner's convenience). Based on the comparison, Applicant concluded that one of ordinary skill in the art would recognize that Perdelwitz's disclosure of a 300 mL rewet under load of 1.25 g using the Perdelwitz test, would not inherently produce a 200 mL rewet of 1.25 g using the claimed test method. Although the Examiner noted that one difference is that the claimed test method removes moisture from the product, which would seem to reduce the 200mL and 300mL rewets, Applicant respectfully submits that there are several other differences in the test methodology that may counteract any moisture removal.

The comparative rewet testing performed by Mr. Hood confirms this conclusion. The results are summarized in Table I below:

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Table I: Rewet Test Method Comparison

	Test Method		
	<u>Perdelwitz</u>	<u>'673 Application</u>	
	300mL	200 mL	300 mL
Nonwoven transfer layer (40 gsm adhesive-bonded PET)	0.99	5.93	21.77
Apertured film transfer layer	.28	.59	1.57

As shown in Table I, for both materials tested, the Perdelwitz rewet test method produces lower rewet test results than the 200 mL rewet test method of the present invention. Therefore, the Perdelwitz test method **does not inherently** produce rewet results that are greater than those of the test method of the present invention. In fact, the results compel the opposite conclusion — that the Perdelwitz test method produces **lower** rewet test results than the test method of the claimed invention. Hood Decl. ¶ 10.

(2) *Perdelwitz does not disclose an absorbent article that produces rewet properties within the claimed range*

Furthermore, Applicant respectfully submits that Perdelwitz does *not* disclose an absorbent article having a rewet within the claimed range. Claim 1 of the present invention recites an absorbent article comprising, *inter alia*, an apertured film disposed between the inner layer and the absorbent core, wherein the absorbent article has a 200 milliliter rewet under load of less than about 1.25 grams and a 300 milliliter rewet under load of less than about 4 grams, according to the claimed test method. While Perdelwitz discloses an absorbent article that produces rewets in the range of 0.21 to 1.41 grams, as discussed above, the *Perdelwitz* rewet method produces **lower** rewet results than the claimed method. Therefore, in order to provide a meaningful comparison, Mr. Hood performed rewet tests on absorbent articles having a nonwoven transfer layer like those disclosed in Perdelwitz using the *claimed* method.

Although samples of the exact nonwovens disclosed in Perdelwitz were unavailable, Mr. Hood tested an equivalent nonwoven transfer layer — a 40 gsm adhesive-bonded PET nonwoven, which is equivalent to the Perdelwitz's 40 gsm carded

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thermobond PP/PET transfer layer, having a 0.24 gram rewet (*see* Perdelwitz, col. 9, lines 52-53). Hood Decl. ¶ 6. The 40 gsm adhesive-bonded PET transfer layer that was tested should produce equivalent or better (lower) rewet test results when compared to the Perdelwitz 40 gsm carded thermobond transfer layer. Hood Decl. ¶ 6.

As shown in Table I above, when tested according to the present invention, the sample having the nonwoven transfer layer produced an average 200 mL rewet result of 5.93 grams, and an average 300 mL rewet result of 21.77 grams. As expected, these are well outside the range recited in the present claims. Thus, the Applicant submits that the absorbent articles disclosed in Perdelwitz do not inherently have rewet properties within the claimed range.

(3) The claimed invention is patentable over Perdelwitz in view of Ahr

Claim 1 of the present invention recites an apertured film disposed between the inner layer and the absorbent core yielding a 200 mL rewet under load of less than about 1.25 grams, and a 300 mL rewet under load of less than about 4 grams, when tested according the claimed rewet method, *i.e.*, whereby the 200 milliliter rewet under load is determined by (i) insulting the absorbent article with a first 100 milliliter dose, (ii) placing a 0.5 psi load on the area of insult for 10 minutes, (iii) measuring the 100 milliliter rewet for 10 minutes, (iv) insulting the absorbent article with a second 100 milliliter dose, (v) placing a 0.5 psi load on the area of insult, and thereafter (vi) measuring the 200 milliliter rewet for 10 minutes; and whereby the 300 milliliter rewet under load is determined by (i) insulting the absorbent article with a third 100 milliliter dose, (ii) placing a 0.5 psi load in the area of insult for 10 minutes, and thereafter (iii) measuring the 300 milliliter rewet for 10 minutes. As discussed above, Perdelwitz fails to teach an absorbent product having an apertured film transfer layer, and having a 200 milliliter rewet less than 1.25 grams and a 300 milliliter rewet less than 4 grams, when measured according to the rewet test method of the present invention. Hood Decl. ¶ 11. Although Ahr teaches an absorbent article having an apertured film, Ahr also fails to teach or suggest an absorbent product having a 200 milliliter rewet less than 1.25 grams

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and a 300 milliliter rewet less than 4 grams, when measured according to the rewet test method of the present invention.

In contrast, the Applicant has unexpectedly found that an absorbent product using a three-dimensional apertured film transfer layer as claimed, produces unexpectedly low rewet results when compared to conventional absorbent products, particularly those that use a nonwoven transfer layer. *See* Specification at page 17. The test results in Table I provide further support this discovery. As shown in Table I, the absorbent articles with the apertured film transfer layer yield lower rewet results than absorbent articles having nonwoven transfer layers, according to all test methods. Hood Decl. ¶ 12. Accordingly, Applicant claims an absorbent article having an apertured film disposed between the inner layer and the absorbent core yielding a 200 mL rewet under load of less than about 1.25 grams, and a 300 mL rewet under load of less than about 4 grams, when tested according the claimed rewet method.

Applicant respectfully submits that Perdelwitz and Ahr, in combination, fail to teach or suggest all the elements of claims 1-26, and therefore claims 1-26 are patentable over Perdelwitz in view of Ahr. For at least these reasons, the Applicant respectfully requests withdrawal of the claim rejections, and reconsideration and allowance of claims 1-26.

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### CONCLUSION

For at least the reasons outlined above, the Applicant respectfully submits that the application is in condition for allowance, or at least in better form for consideration on appeal. Entry of the attached Declaration, and favorable reconsideration and allowance of the pending claims are respectfully solicited. Should there be anything further required to place the application in better condition for allowance, Examiner Anderson is invited to contact the Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,  
HUNTON & WILLIAMS LLP

Dated: April 26, 2005

By: CC Campbell / psg  
Christopher C. Campbell  
Registration No. 37,291

Hunton & Williams LLP  
1900 K Street, N.W., Suite 1200  
Washington, D.C. 20006-1109  
(703) 714-7553 (Telephone)  
(703) 714-7410 (Facsimile)